

**FILED**

**MAY 18 2010**

**SECRETARY, BOARD OF  
OIL, GAS & MINING**

**ATTACHMENT  
TO  
ACD'S RESPONSE TO PETITIONERS' POST-HEARING BRIEF  
ADDRESSING AIR QUALITY AND CULTURAL/HISTORIC ISSUES**

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**TRANSCRIPT EXCERPTS FROM APRIL 29, 2010 HEARING**

1 generally?

2 MS. BURTON: The dust control plan goes through  
3 each source of -- potential source of fugitive dust, such  
4 as open stockpiles, roadways, transfer points, material  
5 processing areas. And it describes what actions will be  
6 taken to control fugitive dust from those points, whether  
7 it be watering, front line water, or a tackifier, or  
8 seeding, those kind of things. And then the last part of  
9 the Fugitive Dust Control Plan is a monitoring plan to  
10 evaluate.

11 For each one of those sources of fugitive dust,  
12 there are three stages of increasingly stringent control.  
13 And then the monitoring plan is designed to evaluate when  
14 each stage of control would come into effect based on  
15 opacity.

16 MR. DONALDSON: Thank you. And did you -- when  
17 the Fugitive Dust Control Plan was submitted to the  
18 Division, did you review that plan?

19 MS. BURTON: Yes, I did.

20 MR. DONALDSON: And did you find it to  
21 sufficiently describe fugitive dust control practices?

22 MS. BURTON: Yes, I did. I reviewed it with  
23 regard to the rules, which were cited in  
24 R645-301-423.200, the rules it is designed to comply  
25 with. And those are the R645-301-244.100, sediment

1 control and erosion control from the site. So I reviewed  
2 it.

3 MR. DONALDSON: And did you also review the air  
4 quality monitoring that was proposed to measure the  
5 effectiveness of the fugitive dust control practices?

6 MS. BURTON: Well, I looked at it. But the  
7 method that is described is Method 9, which is a  
8 method -- an EPA method that involves visual monitoring  
9 of opacity from a point source. And it is not something  
10 that I am qualified to evaluate.

11 MR. DONALDSON: Did you -- when you received  
12 this Fugitive Dust Control Plan, did you discuss this  
13 plan with anyone?

14 MS. BURTON: Yes. I discussed it with Chris  
15 McCourt of ACD. We talked about the monitoring method.  
16 And I discussed it with --

17 MR. DONALDSON: Well, first of all, what did you  
18 tell him or what did he tell you in that discussion?

19 MS. BURTON: We talked about the monitoring  
20 method and whether or not it was appropriate for this use  
21 since it is described as a method to analyze point source  
22 plumes. And we were discussing using it to evaluate  
23 opacity on the boundary of the permit area. But not  
24 being in an air quality engineer, I was at quite a  
25 disadvantage because I really didn't know how this method

1 that to the west?

2 MR. HADDOCK: Yes, there's a site there. The  
3 number is it is 42KA1314. That site was not part of our  
4 list that went to SHPO.

5 MR. ALDER: And in your opinion, would that site  
6 be in an area where it would be reasonable to expect that  
7 there would be an effect on the cultural resources that  
8 have been identified?

9 MR. HADDOCK: I'm not sure I understand your  
10 question.

11 MR. ALDER: Would that site, the site that's  
12 further to the west of the site that you took into  
13 account, would it be, in your estimate, an area where it  
14 would be reasonable to expect that there would be an  
15 adverse effect to the cultural resources that have been  
16 identified there?

17 MR. HADDOCK: We did not consider there to be an  
18 adverse effect there, primarily because the site closer,  
19 right on the permit boundary, had no effect. And so for  
20 us to assume or consider that there would be an effect on  
21 the site further away didn't make sense to us.

22 MR. ALDER: Would that judgment apply to other  
23 sites that are further outside the permit boundary?

24 MR. HADDOCK: Yes, it would. There would be no  
25 reason to consider any of the other sites further away

1 having an effect when the sites closer didn't have an  
2 effect, either.

3 MR. ALDER: Was the determination of which sites  
4 might be affected or not made easier by the fact that the  
5 sites had been identified in relation to their distance  
6 from the permit area?

7 MR. HADDOCK: The -- it was made easier. I  
8 mean, certainly the sites further away -- it was pretty  
9 intuitive that there would be no effect on those sites.

10 MR. ALDER: And for all those sites that you  
11 previously talked about that were close to or abutting or  
12 overlapped, they had been identified to SHPO. Is that  
13 right?

14 MR. HADDOCK: Yes. Any of the sites that we  
15 considered that could be affected by the mining operation  
16 were identified to SHPO.

17 MR. ALDER: And do you know the definition of  
18 "adjacent area"? We have it on a slide. Can you tell  
19 the Board what your understanding of the definition of  
20 "adjacent area" is?

21 MR. HADDOCK: That's the area outside of the  
22 permit that -- probably ought to wait for him to pull it  
23 up here and read it -- but it means the area outside the  
24 permit area where resource or resources, determined  
25 according to context in which adjacent area is used, are

1 or reasonably could be expected to be adversely impacted  
2 by proposed coal mining and reclamation operations,  
3 including probable impacts from underground workings."

4 MR. ALDER: Is the permit area -- are  
5 surface-disturbing activities allowed outside of the  
6 permit area?

7 MR. HADDOCK: Not coal mining activities, no.  
8 The surface-disturbing activities would need to be within  
9 the permit area.

10 MR. ALDER: Would it be reasonable to expect  
11 adverse effects to the cultural resources that are  
12 further away than these that abutted the permit area?

13 MR. HADDOCK: We would not expect any adverse  
14 effect to those resources that are further away.

15 MR. ALDER: And if the BLM proceeds to go  
16 forward with the leasing of the federal coal, will the  
17 impacts to these additionally identified resources be  
18 further taken into account?

19 MR. HADDOCK: Yes. There would be additional  
20 work that would need to be done. Particularly if these  
21 areas are going to be mined, there would need to be  
22 provisions for protection of those sites, possible  
23 mitigation or avoidance of those sites.

24 MR. ALDER: Thank you. Appreciate the Board's  
25 indulgence on that. If we could now turn to --

1 earlier about it.

2 MR. ALDER: That site number is 42E -- I'm  
3 sorry. I guess I just -- I think -- let me ask him.

4 So would your judgment as to whether or not it  
5 would be reasonable to expect an adverse effect to the  
6 cultural resources on other sites that were identified on  
7 that map further distant from the permit area, what would  
8 your determination be?

9 MR. HADDOCK: I think we would conclude that  
10 there would not be any adverse effect to those sites  
11 further away. Certainly if there was no effect on the  
12 sites right on the boundary of the permit area, then the  
13 sites further away there would not be no effect there, as  
14 well.

15 MR. JENSEN: And when you say "further away,"  
16 are you talking to the west?

17 MR. HADDOCK: Or even to the north. There are  
18 sites further away to the south and to the west and to  
19 the north, as well.

20 CHAIRMAN JOHNSON: Okay. So that is admitted as  
21 D-17 and it's a confidential exhibit.

22 MR. GILL: Can I help you?

23 MR. HADDOCK: Sure.

24 MR. GILL: If there's no effect on the one that  
25 ends in numbers 2041, then there's no effect on the one

1 that ends in 1314, 1267, or the others around that  
2 general area. Is that correct?

3 MR. HADDOCK: That is correct.

4 CHAIRMAN JOHNSON: Can we move on, Mr. Alder?

5 MR. ALDER: I'd like to, thank you.

6 CHAIRMAN JOHNSON: Thank you.

7 MR. ALDER: We'd like to now return to Division  
8 Exhibit 8, which is the final TA.

9 CHAIRMAN JOHNSON: Okay. So we're back to D-8.  
10 That's been admitted.

11 MR. BAYER: No, D-17.

12 MR. GILL: Back on D-17?

13 MR. ALDER: No.

14 MR. BAYER: You want to go back to D-8?

15 MR. ALDER: Who's on first.

16 CHAIRMAN JOHNSON: Okay. Tell me where we're  
17 at.

18 MR. ALDER: D-8. It's the final TA.

19 CHAIRMAN JOHNSON: It's the Technical Analysis  
20 dated October 15, 2009. Okay.

21 MR. ALDER: First of all, Mr. Haddock, I'd like  
22 to ask you if the Division made a determination whether  
23 the Panguitch National Historic District should be  
24 included in the evaluation of cultural resource impacts  
25 under the state law 9-8-404, and whether the Division



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1 that there was really no need to go much beyond that.

2 MS. BUCCINO: And I'm just trying to pin down  
3 the geographic boundaries of that area that you looked  
4 at. Was there any map that identified the geographic  
5 boundary of the adjacent area?

6 MR. HADDOCK: As far as a line on a map, there  
7 is none. And I don't think we wanted to limit ourselves  
8 to any specific geographical area. When we reviewed it,  
9 I think we looked at the cultural resource surveys that  
10 were done, we looked at the large -- a large geographical  
11 area. We were aware of where the permit boundary was.  
12 And we considered what impacts would occur as a result of  
13 the surface coal mining activities.

14 And so as far as the geographical boundary, I  
15 don't think there is a particular line or something that  
16 was delineated. It was -- other than we did look at the  
17 permit boundary and realized that everything inside of  
18 the permit boundary was covered, and the area -- the  
19 adjacent area to the permit area was also covered by the  
20 surveys. We determined that there would be no effect on  
21 those sites. And so I think we satisfied the requirement  
22 for looking at effects, or impacts, to cultural resources  
23 within the permit area and adjacent areas.

24 MS. BUCCINO: Okay. But just in terms of the  
25 specific geographic boundaries, do you agree, then, that

1 application that was determined administratively complete  
2 wasn't submitted until after this date.

3 MS. BUCCINO: Okay. Are you testifying that the  
4 Division didn't seek concurrence on the permit it  
5 actually approved?

6 MR. HADDOCK: No, I'm not testifying to that at  
7 all. All I'm saying is this request for concurrence was  
8 on the submittal that was later denied. And then the  
9 applicant made a subsequent submittal, and the Division  
10 also requested concurrence later on.

11 MS. BUCCINO: Okay. I don't remember. Is there  
12 any other record -- a letter in the record requesting  
13 concurrence on the eligibility? In fact, you offered  
14 this letter yesterday as the letter to SHPO related to  
15 the determination of eligibility and effect. So is there  
16 another letter requesting concurrence later?

17 MR. HADDOCK: Yes, there is.

18 MS. BUCCINO: And which letter is that?

19 MR. ALDER: What was your question originally?  
20 I wonder if we're going anyplace we need to go.

21 MS. BUCCINO: Well, I would like an answer to  
22 this question, if there's another letter.

23 MR. HADDOCK: There is another letter. It's  
24 basically the one that I authored. I don't remember the  
25 date on it.

1 MR. BAYER: I believe it's Exhibit D-15.  
2 CHAIRMAN JOHNSON: Yes, it is.  
3 MR. HADDOCK: Okay.  
4 MR. BAYER: Which was entered yesterday.  
5 MS. BUCCINO: Okay. So looking at D-15, that's  
6 on different something, though. That's not on the  
7 determination of eligibility and effect. Is that  
8 correct? And I'll give you a second to pull it up.  
9 MR. HADDOCK: D-15 is --  
10 MR. ALDER: It's the letter you wrote, July --  
11 Division 6.  
12 MR. HADDOCK: Here it is, okay.  
13 MS. BUCCINO: And by its title that says,  
14 "Request for Concurrence on CRMP and Data Recovery Plan  
15 Determination." Is that correct.  
16 MR. HADDOCK: That is correct.  
17 MS. BUCCINO: And that's something different  
18 than the earlier determination related to eligibility and  
19 effect, correct?  
20 MR. HADDOCK: It is -- it is different than the  
21 determination of eligibility and effect.  
22 MS. BUCCINO: Okay. Thank you.  
23 So there's no other letter that the Division  
24 submitted after the November 2 letter requesting  
25 concurrence on the eligibility and effect determination.

1 Is that correct?

2 MR. HADDOCK: As far as no other letter, I think  
3 this letter basically does refer to the previous  
4 determination, so we --

5 MS. BUCCINO: Okay, that's fine.

6 MR. BAYER: I think he can answer.

7 MS. BUCCINO: Okay, fine.

8 MR. HADDOCK: I mean, the letter does refer to  
9 the previous determination. And since the determination  
10 was made on the 15 sites -- and it's the same 15 sites on  
11 this July letter as it was in the previous letter. So I  
12 think the determination had already been made. And I  
13 don't think we felt there was a need to go back and have  
14 any re-determination done on those sites.

15 MS. BUCCINO: Okay. Thank you.

16 Let's go back to that November 2, 2007, letter,  
17 which is D-12 and originally was the Division's  
18 Exhibit 2.

19 MR. HADDOCK: Okay.

20 MS. BUCCINO: So looking at those 15 sites, am I  
21 correct that the two sites mentioned at the end of  
22 yesterday, 42KA6505 and 6093, are not on this list?

23 MR. HADDOCK: That is correct.

24 MS. BUCCINO: Those two sites, 6505 and 6093,  
25 are located in part of the permit area the Division had

1 the southern corner of the T shaped area. It's...

2 CHAIRMAN JOHNSON: But it's not shown on this

3 map?

4 MR. HADDOCK: Yeah, it's not shown on the map.

5 CHAIRMAN JOHNSON: Let's move ahead.

6 MS. BUCCINO: Okay. That's fine.

7 And the T shaped area is federal coal. Is that

8 correct?

9 MR. HADDOCK: Yes.

10 MS. BUCCINO: But the surface area is private

11 and would be disturbed by this application. Is that

12 correct?

13 MR. HADDOCK: Yes.

14 MS. BUCCINO: And that's -- because of the

15 surface disturbance is the reason it was included in the

16 permit area?

17 MR. HADDOCK: Right.

18 MS. BUCCINO: Is that correct?

19 MR. HADDOCK: Yeah. There's not -- there are no

20 plans to mine the coal there, just to install facilities

21 for the mining in that area.

22 MS. BUCCINO: So the Division's determination of

23 eligibility and effect that was submitted to the SHPO on

24 November 2, 2007, was incomplete, then. Is that correct?

25 MR. HADDOCK: I guess you could say it that way.

1 MS. BUCCINO: Okay. Thank you.

2 And the permit application, as it was approved  
3 on October 19, 2009, was also incomplete because it did  
4 not have all the sites in the permit area. Is that  
5 correct?

6 MR. HADDOCK: I would say no, that is not  
7 correct. There are certainly provisions. Just because  
8 cultural resources may not have been identified in the  
9 original application doesn't necessarily invalidate the  
10 application. I think there are provisions in the rules  
11 that allow for previously unidentified resources to be  
12 made known and to be addressed after permit issuance.

13 MS. BUCCINO: But talking about the two sites,  
14 6505 and 6093, they were not -- the Division did not have  
15 information about the permit application related to those  
16 two sites, in the permit application as it approved it on  
17 October 19, 2009. Is that correct?

18 MR. HADDOCK: That is correct.

19 MS. BUCCINO: Thank you. So I'm done with that  
20 exhibit. But I would like to pull up the Cultural  
21 Resource Management Plan, which is D-16, and that was  
22 originally the Division's Exhibit 4. And turn to Figure  
23 1 of that document, which I actually would like to  
24 introduce as a separate exhibit. So this would be...

25 MR. GILL: Is that Figure 3 on page 5?

1 referred to the Cultural Resource Management Plan?

2 MR. PATTERSON: Yes, ma'am.

3 MS. BUCCINO: That was a document that MOAC --

4 MR. PATTERSON: We authored it in consultation  
5 with several other parties.

6 MS. BUCCINO: Okay. And the date -- is it  
7 correct that the date of that document is May 23, 2008?

8 MR. PATTERSON: I believe that is correct.  
9 Without looking at it, I believe that is correct.

10 MS. BUCCINO: And the Cultural Resource  
11 Management Plan, is it fair to say that that would  
12 collect and summarize any of the cultural resource  
13 inventories that had been done up until the CRMP was  
14 completed?

15 MR. PATTERSON: Correct. And again, it would  
16 include everything up and to the day that that second  
17 draft of the CRMP was included. It doesn't include  
18 anything after that draft. But it is still a draft.  
19 It's a working document.

20 MS. BUCCINO: Okay. So just to be clear, the  
21 inventory is just about the sites that are out there and  
22 identifying those sites. Is that correct?

23 MR. PATTERSON: Yes. There's a little bit more  
24 to it, but that's the main purpose of it.

25 MS. BUCCINO: It doesn't actually get into